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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

PAUL W.,

Petitioner,

v.

THE SUPERIOR COURT OF KINGS
COUNTY,

Respondent,

KINGS COUNTY HUMAN SERVICES
AGENCY,

Real Party In Interest.

F045257

(Super. Ct. No. 03JD0035)

OPINION

THE COURT*

ORIGINAL PROCEEDINGS; petition for extraordinary writ review. Charles R.
Johnson, Judge.

Judith A. Sanders, for Petitioner.

No appearance for Respondent.

No appearance for Real Party In Interest.

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*Before Dibiaso, Acting P.J., Buckley, J., and Wiseman, J.

Petitioner seeks an extraordinary writ (Cal. Rules of Court, rule 39.1B) to vacate the orders of the juvenile court terminating reunification services and setting a Welfare and Institutions Code section 366.26 hearing.¹ We will deny the petition.

STATEMENT OF THE CASE AND FACTS

Petitioner challenges the juvenile court's order issued at a contested six-month review hearing terminating reunification services as to his children, Jennifer, Jason and Hayden. The children's mother, Angelina, has a long history of abusing prescription medication and petitioner has a history of marijuana use and domestic violence. The instant dependency proceedings were initiated in March 2003 after Angelina tested positive for a prescription medication after giving birth to Hayden. The Kings County Department of Human Services (department) removed then two-year-old Jennifer, 14-month-old Jason and newborn Hayden from Angelina's custody and filed a dependency petition on the children's behalf pursuant to section 300, subdivisions (b) and (j).

The juvenile court detained the children and, at the dispositional hearing conducted on June 6, 2003, placed them in Angelina's care under family maintenance services and ordered a plan of reunification for petitioner, which required him to complete programs in parenting and outpatient substance abuse treatment and submit to random drug testing. The department initially proposed but withdrew its recommendation petitioner complete domestic violence counseling after he produced a certificate showing he completed a 52-week batterer's treatment program on December 5, 2002, which included instruction on anger management techniques.

Angelina's in-home custody of the children was short-lived. On June 12, 2003, the department took the children into protective custody after off-duty police officers found then 17-month-old Jason wandering alone in an alley. On July 10, 2003, the

¹ All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

juvenile court sustained a supplemental petition (§ 387) and ordered reunification services for Angelina, which included outpatient drug treatment. The court ordered supervised visitation and set the matter for a six-month review hearing scheduled for January 9, 2004. The department placed the children in a confidential licensed foster home.

During the six months under review, Angelina struggled with her drug addiction for which she was hospitalized several times. Petitioner enrolled in a 52-week parenting course and completed a substance abuse assessment, which resulted in a referral for co-dependency counseling rather than drug treatment. However, he refused to comply with the drug testing system, either claiming he forgot to call in or that his employment precluded him from calling in at the designated times. When he tested as requested, the results were negative. So was a hair follicle test, which he submitted on his own initiative, believing it would excuse his failure to drug test as requested.

Petitioner also blamed Angelina for the children's removal. During an argument in September 2003, petitioner slapped her across the face and was charged with corporal injury to a spouse/cohabitant. The charges were dismissed on the day scheduled for trial when she showed up to testify on his behalf and petitioner's attorney allegedly told petitioner the court would drop the charges if she did not testify. As a result of petitioner's offense, the court modified his case plan on December 1, 2003, to include completion of a domestic violence/anger management program for offenders.

Petitioner also fostered Angelina's dependence on him. He led her to believe that only he had a chance of regaining custody of the children and created a plan whereby he would gain custody of the children and then reunite with her. All the while, he knew she was struggling with drug addiction, gave her a place to stay and visited her in the hospital. Yet, he denied knowing her whereabouts to the department and never suggested she seek drug treatment. To make matters worse, when Angelina finally checked herself into a residential drug treatment program on February 6, 2004, petitioner picked her up

four days later to take to her get medication for her withdrawal symptoms. She returned to the program on February 11, 2004, left two days later and did not return. Petitioner also intimidated the foster parents and, at one point, requested that his case be transferred to Fresno where he believed the social workers were so overwhelmed by their caseload that they would not be able to supervise his case as closely. During visitation, he reportedly favored Jennifer and gave little attention to his sons.

In its six-month status review, the department recommended the court terminate reunification services because neither parent had met the objectives of their case plans nor made the behavioral changes necessary to eliminate the detriment they posed to their children. As to petitioner, the department reported that he demonstrated inconsistent, coercive and manipulative behavior, failed to comply with the drug testing procedures and did not regularly visit the children. The department further reported the children were doing well with their foster parents who wanted to adopt them.

The department's recommendation was contested and litigated on February 27 and March 25, 2004. Caseworker Ada Warner testified she recommended termination of reunification services for petitioner because of his refusal to comply with the drug testing system, his deceit and his angry outbursts. Petitioner testified he completed his co-dependency counseling, completed approximately five months of anger management counseling and would complete his parenting program in another three months. He admitted not complying with the call-in drug testing procedures, but claimed strict compliance would jeopardize his job. He believed the negative hair follicle test should satisfy the department. He denied using drugs but admitted attempting to manipulate the system by having his case moved to Fresno County. He denied favoring Jennifer, claiming that he loved all his children. Yet, he could not remember his children's birthdays, stating there was no need to "stress over their birthdates when they're gone." Angelina also testified. Both she and petitioner denied that he helped her obtain prescription medication.

After argument, the court found the department provided reasonable services and Angelina and petitioner failed to regularly participate in and make substantive progress in their court-ordered treatment plans. In so finding, the court delivered a scathing but telling summary of its impression of the case:

“I’m going to look right at [petitioner] and tell him that he’s the problem.

“[Y]ou, take advantage of [Angelina’s] love for you. You are squandering a potential wholesome life with your children because you are just as detrimental to [Angelina] as her addiction to drugs. She’s addicted to you, too. And you are intentionally causing her to be dependent on you and the drugs, and you want to control her that way, and that’s sick. That is the most abhorrent thing I can think of is for a man to control a woman by keeping her subordinated or in any other way sedated or involved in drugs ... so that you can control her. Unfortunately, she’s a victim. She’s not the cause of your violence, but she believes that she’s partially responsible, but that’s standard in domestic abuse.

“Your attorney says both of you are immature. How long do we have to wait for you to grow up? . . . I don’t think you ever will, because you’ve engaged in repeated acts of violence, repeated acts of resistance, repeated acts of defiance, repeated acts of . . . dominance, repeated acts of [coercion, intimidation, manipulation and control]. Coercion is your lifestyle, and [Angelina] is a very, very, ... vulnerable person, and you took advantage of it. She loves you dearly. She can’t help that. And you’re destroying her.

“I think [Angelina’s counsel] said it very well, the only thing that’s keeping these two people from succeeding is each other. [Petitioner] is feeding on her for his own ego, not because he cares about her.

“You don’t care about her, you care about yourself. You’re saving your own needs and desires, not hers, not the children’s, but yours. And she loves you in spite of that, but you take advantage of that.

“I also find your testimony, a substantial part, is totally unfair. You’re a user, you’re an abuser, you’re not truthful, and you’re trying to manipulate not only the system but everybody that’s trying to help you. You lack insight on what is needed to protect the children or to realize the harm that you and [Angelina] are inflicting on those children. In your own words, I think you slipped when you said you wanted to control her

situation, because that's exactly what you've shown all the way through this. [Angelina] needs time to get a hold of herself and to look at you as you really are. You ought to go look at yourself. I don't think you can because you're too stuck on yourself, too much of a control freak. It's going to take her a long time to recover from this, if she ever does. She couldn't keep away from you if she wanted to, not under the present circumstances. She's only doing it because it's required under the program that she's in, which is hopefully going to help her, because she sure has shown marked improvement.

“But I'm not going to take the chance of putting those children back with either one of you, and I am going to follow the recommendation. The family dynamics of you two are so without direction, I guess the best that could be said is chaotic. So I'm going to follow the recommendation of the [department].”

Accordingly, the court terminated reunification services and set the matter for a section 366.26 hearing. This petition ensued.

DISCUSSION

Petitioner challenges the juvenile court's orders terminating reunification services and setting the section 366.26 hearing, arguing in the first instance that the court erred in finding he failed to regularly participate in and make substantive progress in his case plan and, alternatively, arguing the court erred in finding he was provided reasonable services. We disagree.

Section 366.21, subdivision (e) provides that, at the six-month review hearing, the court must return the child to the physical custody of his or her parent unless the court finds, by a preponderance of the evidence, return of the child to parental custody would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. (§ 366.21, subd. (e).) The social worker has the burden of proving detriment. (*Ibid.*) Failure to regularly participate and make substantive progress in court-ordered treatment programs is prima facie evidence that return would be detrimental. (*Ibid.*) Petitioner cites this portion of the statute, but does not challenge the evidence of detriment warranting continued removal of his children. Rather, he

challenges the sufficiency of the evidence underlying the court's termination of reunification services and the setting of the section 366.26 hearing. In that regard, he refers us to another provision of the statute which states the court may schedule a permanency planning hearing where the child, on the date of removal, was under the age of three years and the court further finds, by clear and convincing evidence, the parent failed to regularly participate and make substantive progress in the court-ordered plan. (§ 366.21, subd. (e).) If, however, the court finds there is a substantial probability that such a child may be returned to parental custody within six months or that reasonable services were not provided, the court must continue the case to the 12-month permanency hearing. (*Ibid.*)

Petitioner argues the juvenile court erroneously terminated reunification services despite evidence he complied with and progressed in his case plan. He claims, and the evidence reflects, he regularly attended parenting classes, completed a substance abuse/co-dependency program, called in for testing and tested 9 out of the 13 times he was requested to do so with negative results and participated in an anger management/domestic violence class. He also argues he made substantive progress as evidenced by his testimony concerning the skills he acquired in his parenting and anger management classes and his realization that he was enabling Angelina to abuse drugs. As to the drug-testing requirement, he concludes his perceived lack of compliance must have been attributable to his failure "to show the appropriate level of obedience." After all, he argues, he consistently tested negative and the caseworker testified she did not believe he was using drugs during the reunification period.

What petitioner fails to consider is that availing oneself of the services and technical compliance are important considerations but they are not determinative. (*In re Dustin R.* (1997) 54 Cal.App.4th 1131, 1141, 1142.) The court must ultimately decide whether the parent's progress eliminated the conditions leading to the children's placement out of the home. (*Ibid.*) In this case, the children were removed primarily

because of Angelina's drug abuse. While petitioner may have gone through the motions of satisfying his case plan requirements, his attitude and manipulative conduct reflect an underlying motive to maintain the status quo. He aided Angelina in her drug use and lied to the department about her whereabouts. He also resisted the department's efforts to assist him in complying with his case plan and complied only to the extent it was convenient and comfortable for him. As the juvenile court so aptly stated, petitioner was subordinating the mother of his children to further his own desires and manipulating the department to avoid changing his behavior. On these facts, we concur with the finding of the juvenile court.

We also conclude substantial evidence supports the juvenile court's finding petitioner was offered reasonable services. Reunification services must be specifically tailored to meet the needs of the offending parent and the department must make a good faith effort to implement the reunification plan. (*In re Dino E.* (1992) 6 Cal.App.4th 1768, 1777; *In re John B.* (1984) 159 Cal.App.3d 268, 275.) Petitioner argues that if his anger was the reason for terminating reunification services, the department should have made it part of his plan long before the court modified his case plan in December 2003 to include it. By waiting so long to order anger management, he argues, he was not given enough time to achieve the desired effect before the six-month review hearing. He made the same argument at the contested six-month review hearing and we concur with county counsel who described it as "disingenuous." According to the record, anger management counseling was removed from petitioner's original case plan at his own insistence based on his completion of a 52-week domestic violence course, which included anger management instruction. Anger management became a necessary addition to his case plan after he hit Angelina in September 2003. To now say that anger management was a necessary but overlooked case plan requirement is indeed disingenuous. To further assert that petitioner received a sum total of five months of anger management counseling is untrue. He completed a 52-week course in domestic violence. His failure to benefit from

it is not a reflection of the adequacy and implementation of his case plan. It is a reflection of his attitude and failure to incorporate the material. We find no error.

DISPOSITION

The petition for extraordinary writ is denied. This opinion is final forthwith as to this court.